FILED
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HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 305

LYNN CHASTAIN,
Petitioner,

vs.

HENRY A. McKINNEY; CHRISTINA D. McKINNEY; FRITZ W. DRYBROUGH; MARION W. DRYBROUGH; BEN J. JOHNSON; TRINITY UNIVERSAL INSURANCE COMPANY; J. J. KAVANAGH; HERBERT H. MONSKY; FRANK R. CAHILL, JR.; H. KLEINMAN; LOUISVILLE TITLE INSURANCE COMPANY; LINCOLN BANK AND TRUST COMPANY; WATKINS COMPANY and NATIONAL LIFE & ACCIDENT INSURANCE COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

REPLY BRIEF OF PETITIONER TO OPPOSITION BRIEF OF RESPONDENTS

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AMERICAN BRIEF AND RECORD COMPANY, GRAND RAPIDS 2, MICHIGAN

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In asking the Supreme Court to read another brief from the Petitioner, we believe we might make very clear the one big issue we bring to this Court, which Respondents appear to avoid while arguing other issues which we are not pressing upon this Court.

The fact that forgers of a will can get it probated and immediately thereafter sell the deceased's real estate to a convenient purchaser, and the rightful heir cannot go after the purchaser even though he never had any notice

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The fact that forgers of a will can get it probated and immediately thereafter sell the deceased's real estate to a convenient purchaser, and the rightful heir cannot go after the purchaser even though he never had any notice

of the probate or the sale, is the wrong the Supreme Court is asked to remedy.

We need to be concerned with only two Kentucky statutes, one permitting probate of a will without notice to heirs, the other making probate of the will conclusive until annulled.

Respondents show cases supporting the constitutionality of each one. But the two standing and operating together create the unconstitutional effect we have in the case at bar, which respondents do not explain away.

They gave Drybrough property, rightfully the Petitioner's, which the bill of complaint alleged was purchased for a grossly inadequate consideration, and further alleged that Drybrough was not a bona fide purchaser. Petitioner is not permitted to prove that, no trial on the merits for him.

Petitioner insists he is not asking the Federal Court to take over an estate in possession of the Probate Court; he seeks the right to recover his property that a combination of forgers has placed forever outside the Probate Court.

So much of Petitioner's estate as has been carried along through the many probate steps is not his concern in this appeal. His right to go after Drybrough is not dependent upon the various questions discussed by Respondents, such as Petitioner's duty to sue under the five year statute, his right to a trial de novo, his receipt of a part of the estate, his attempt to hold other defendants liable also.

Petitioner relies upon the statute limiting recovery of real estate to fifteen years. This action against defendant Drybrough was brought in time.

An heir may have no notice of the probate of the will but get notice in the later stages of the Probate proceedings and the law be satisfied. But in addition to that should any statute make the deed of a purchaser of land buying from a devisee of the forged will unassailable for any reason at all by the sole heir who never had any information about the matter or even about the death of the deceased, when the sale of the property is a finality as to him.

We believe therefore that the Court should allow the heir to go after such a purchaser by a trial on these

merits, and not to let the end of it be that here is one instance where legal proceedings may take away a man's property without his knowing anything about it.

Respectfully submitted,

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